IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 216 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAIKH MAJID SHAIKH CHAND

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner

Mr. K.T. Dave for Respondent No. 1 & 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/01/2000

ORAL JUDGEMENT

Rule. Learned A.G.P. Mr. K.T.Dave who has appeared in response to notice issued vide earlier order of this Court waives service of rule.

1. The petitioner-Shaikh Majid Shaikh Chand has challenged the legality, validity and propriety of the externment order passed by the respondent no.2-Commissioner of Police, Surat City, North Zone dated 23-10-1998 in exercise of powers conferred under Section 56 read with Section 59 of the Bombay Police Act, 1951 (hereinafter referred to as the "Act").

1.1 The petitioner has also challenged the legality, validity and propriety of the order 27-1-199 passed by the Deputy Secretary of the respondent no.1 as Appellate Authority in the proceedings of appeal against externment preferred by the present petitioner against the above stated order.

2. Show cause notice under Section 59 of the Act dated 17-4-1998 has been served to the petitioner pointing out the fact that on 20-7-1997 an offence has been registered vide CR no.160/97 against the petitioner at Chowk Bazar Police Station in respect to offences made punishable under Section 452 and 326 of the Indian Penal Code read with Section 135 of the Bombay Police Act. That the said matter is pending for trial in the Court. It is further pointed out that as per information supplied by the witness on assurance of anonymity, the petitioner has been roaming around the market asking the tea and snacks stall owners to provide food to him and has been refusing the payment. That on insistance of claiming the payment the petitioner has been beating the stall owners. That the petitioner has also been causing damage to stock-in-trade of such stall owners. It is further pointed out that on 2-4-1998, anonymous witnesses have stated before the Sponsoring Authority that prior to one month of the said statement the petitioner with his accomplice had come to the place of his business where the witness had been dealing in business of audio cassettes. The petitioner and his witnesses were in a drunken condition and have claimed illegal amount from the witnesses. That the witnesses having shown inability to make payment of such amount, the petitioner and his accomplice pulled out the witness from the shop, brought him on the road and had severely beaten him. Not only that, the petitioner threatened the shop owner of dire consequences if he would file any complaint against him. That the show cause notice also suggest that the third anonymous witness had given statement dated 3-4-1998 wherein incident that took place prior to 25 days of the said statement was narratted. The witness was plying his rickshaw. The petitioner stopped him, sat in the said rickshaw and asked the witness to take him to Singanpor Crossroad via Causeway Road. That when the rickshaw had

come to a lonely place, on the way, the petitioner having taken out a knife from his pocket asked the rickshaw driver to give him whatever he had in his pocket. The witness having refused and resisted, the petitioner and his accomplice had severely beaten the witness and have looted the amount from his pocket.

Over and above the said incident, it is stated in the show cause notice that despite the antisocial activities as the witnesses are not willing to come forward no proceedings against the petitioner could be resorted to under the general provisions of law and in order to prevent the petitioner from continuing his nefarious activities, the only alternative available would be to extern the petitioner by exercising power under Section 56 of the Act, and hence, the petitioner is called upon to show cause why he should not be externed for a period of two years from the area consisting of Surat City and Navsari District.

3. The petitioner has averred in the petition that the petitioner has filed reply to the above stated show cause notice and had led evidence by examining four witnesses. Submissions on behalf of the petitioner was also made on 31st August, 1998. Despite that, the impugned order of externment dated 23-10-1998 has been passed by the respondent no.2.

4. That being aggrieved and dissatisfied by the said order, the petitioner has filed appeal against the said order under Section 60 of the Act before the Deputy Secretary, Home Department, State of Gujarat, Gandhinagar. That the said appeal was heard and disposed of by order dated 27-1-1999 rejecting the same and hence the petitioner has filed the present petition to challenge the above stated both the orders.

5. At the initial stage, notice was issued to the respondents. The respondents have appeared and Dy. Police Commissioner Mr. K.K. Oza has filed affidavit-in-reply dated 22nd April,1999.

6. It has been submitted on behalf of the petitioner at the Bar that the impugned order suffers from the vice of taking delayed action after the issuance of show cause notice. Not only that but the Competent Authority has failed to explain the delay of more than two months in passing the impugned order from the completion of procedures on the part of the petitioner. It is also submitted that the Deputy Secretary, HomeDepartment, State of Gujarat has failed to appreciate the said

contention and has rejected the appeal without assingning any reason on that count, and as such, the appellate order is also bad in law.

7. In the matter of CHOTHMAL S. RAJPUT VS. STATE OF GUJARAT reported vide 1989 (1) G.L.R. page 63, the Division Bench of this Court having considered the earlier authorities of the Supreme Court has observed to the effect that the authorities are expected to act promptly in externing a person which is in public interest. That if there is a delay, the same would spell out that there is no urgent need nor necessity to extern the person from a particular locality or the District. That such an order of externment would definitely curtail the freedom of movement of a person concerned. That any laches on the part of the authority concerned cannot be countenanced and it would definitely enure to the benefit of the party concerned and on that score he will be entitled to tbe benefit of quashing such an order of externment.

8. That, in the instant case, not only the externment order dated 31st August, 1998 passed by the respondent no.2 but the Appellate Order passed by the Deputy Secretary, Home Department, State of Gujarat is also devoid of any reasonable explanation why the action of externment has been taken so late even after the completion of producing evidence and arguments on 31st August, 1998. That delay upto 23rd October, 1998 has remained unexplained and inordinate. The affidavit filed by the Dy. Police Commissioner is also silent on that point though the petitioner has specifically raised the point in the memo of appeal.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of externment dated 23-10-1998 passed by the respondent no.2 against the petitioner as also the Appellate Order dated 27-1-1999 passed by the Dy. Secretary, Home Department, Sachivalay, Gandhinagar in the proceedings of appeal against the said impugned order is also quashed and set aside. Rule to that extent is made absolute.

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